



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

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

In Re: 13258672

Date: JUL. 18, 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 Petitioner's Form I-360, Petition for Special Immigrant (SIJ petition), concluding that USCIS' consent to SIJ classification was not warranted. On appeal, the Petitioner asserts his eligibility for SIJ classification. 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)(i) of the Act; 8 C.F.R. § 204.11(b). 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; 8 C.F.R. § 204.11(c)(1). 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); 8 C.F.R. § 204.11(c)(2).

U.S. Citizenship and Immigration Services (USCIS) has sole authority to implement the SIJ provisions of the Act and regulation. Homeland Security Act of 2002, Pub. L. No. 107-296, §§ 471(a), 451(b), 462(c), 116 Stat. 2135 (2002). SIJ classification may only be granted upon the consent of the Secretary of the Department of Homeland Security (DHS), through USCIS, when the 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. Section 101(a)(27)(J)(i)–(iii) of the Act; 8 C.F.R. § 204.11(b)(5). USCIS may also withhold consent if evidence materially conflicts with the eligibility requirements such that the record reflects that the request for SIJ classification was not bona fide. 8 C.F.R. § 204.11(b)(5). Petitioners bear 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

When the Petitioner was 20 years old, the [ ] Judicial District Court for the [ ] New Mexico (district court), entered an Order for Declaratory Judgment (declaratory judgment) declaring that the Petitioner “is a juvenile under federal immigration law,” and is dependent on the district court. The district court held that the Petitioner meets the definition of an abused, abandoned, or neglected child and cites to New Mexico Statutes Annotated (NMSA) §§ 32A-4-2(B), 32A-4-2(A)(2), 40-10-A-102(1), and 32A-4-2(E), respectively, and reunification with his parents is not viable due to abuse, neglect, abandonment, or other similar basis found under State law, and that it was not in his best interest to be removed from the United States and returned to El Salvador, his country of nationality.

Based on the declaratory judgment, the Petitioner filed this SIJ petition in June 2017. While the SIJ petition was pending, the Director issued a notice of intent to deny (NOID), requesting documentation to establish that the district court had jurisdiction over the Petitioner as a juvenile. The Petitioner replied timely and submitted a brief, a copy of the underlying petition for declaratory judgment, copies of relevant New Mexico statutes, and copies of previously submitted documents. After receiving the Petitioner’s response to the RFE, the Director determined that the declaratory judgment did not indicate whether the court provided some form of relief to protect the Petitioner from parental abuse or abandonment. Therefore, the Director could not determine if the Petitioner sought the SIJ order primarily to obtain an immigration benefit or relief from parental mistreatment and in April 2020, the Director denied the SIJ petition, determining that the Petitioner did not establish that he warranted USCIS’ consent. The Director did not make a conclusion regarding whether the district court had jurisdiction over the Petitioner as a juvenile.

On appeal, the Petitioner submits a brief, a copy of an amended SIJ order, and copies of previously submitted documents. He argues, through counsel, that the district court provided him with relief from parental mistreatment, and that he established his eligibility for SIJ classification.

### B. USCIS’ Consent

To warrant USCIS’ consent, petitioners must establish the juvenile court order or supplemental evidence include the factual bases for the parental reunification and best interest determinations. 8 C.F.R. § 204.11(d)(5)(i). In addition, these documents must include relief granted or recognized by the juvenile court, from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5)(ii). 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. *Id.*

A request for SIJ classification must be bona fide for USCIS to grant consent to SIJ classification. 8 C.F.R. § 204.11(b)(5). To demonstrate a bona fide request, a petitioner must establish that 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). *Id.* If the evidence contains a material conflict related to SIJ eligibility requirements so that the record reflects a request is not bona fide, USCIS' may withhold consent. *Id.*

The Petitioner has not established that a primary purpose in seeking the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under New Mexico law, rather than to obtain an immigration benefit. USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order. However, to warrant USCIS' consent, the requisite SIJ determinations must be made under state law in connection with proceedings in which a petitioner seeks and is granted some form of relief or remedy from parental abuse, neglect, abandonment, or a similar basis that the court has authority to provide under state law. *See* 8 C.F.R. § 204.11(d)(5)(ii).<sup>1</sup>

Here, the Petitioner obtained the declaratory judgment in a proceeding under the DJA. The record reflects that the only result of that proceeding was the declaratory judgment containing SIJ-related determinations. The amended order, issued *nunc pro tunc* to the date the declaratory judgment was issued, states that the protection or relief granted is the language in the declaratory judgment in and of itself, and that the court has inherent powers to supervise its declaratory judgment. However, a review of the record does not demonstrate how the conclusory statements in the amended order, or the language of the declaratory judgment and the court's inherent supervisory powers, provided actual relief or protection to the Petitioner. While the declaratory judgment states that it "was sought to protect the Child from future abandonment, abuse, or neglect[,]” and the district court declared the Petitioner “dependent upon” the district court, the declaratory judgment does not indicate how the district court could protect the Petitioner “from future abandonment, abuse, or neglect” through the declaratory judgment under the DJA, apart from providing the SIJ-related determinations that would allow the Petitioner to petition for immigrant status and remain in the United States. *See* H.R. Rep. No. 105-405 at 130 (explaining that primary purpose must be to obtain relief from abuse or neglect rather than to obtain immigrant status). The Petitioner submitted the underlying petition for declaratory judgment that was granted through the declaratory judgment, but that petition only stated that:

“Such a declaration would help relieve the child from further abuse, abandonment, or neglect, as it provides a clear articulation of what is in the child’s best interests, and provides foundational support for a *future* step-parent custody or adoption proceeding, *should the family pursue that*. Additionally, the declaration from this proceeding *may be* used by the child to request assistance or protection from law enforcement, due to the death

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<sup>1</sup> Through counsel, the Petitioner argues that his case is analogous to *D-Y-S-C-* because his primary purpose for seeking the declaratory judgment was to relieve him of the uncertainty of having to return to a country where his life and well-being were at risk, and where his parents could not protect or care for him. *See* Adopted Decision 2019-02, at 5-6 (AAO Oct. 11, 2019). However, unlike the petitioner in *D-Y-S-C-*, the Petitioner was not granted placement in the custody of any entity or individual. *See id.* (finding petitioner’s placement in custody of state department of family and protective services as evidence of relief or protection from parental maltreatment). The Petitioner also argues that the district court granted him a “permanency plan” pursuant to N.M. Stat. Ann. § 32A-4-23 and that it is similar to the relief in *D-Y-S-C-*, but neither the declaratory judgment nor the amended order mentioned or described a permanency plan. *Id.* Additionally, assertions of counsel do not constitute evidence and must be substantiated in the record with independent evidence, which may include affidavits and declarations. *See Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (unsupported statements in brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight); *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988).

threats he received and the ongoing risk of retaliation against him in El Salvador.” (Emphasis added.)

The Petitioner has not submitted evidence to show that the Petitioner pursued a stepparent custody or adoption proceeding or that he requested the assistance or protection from law enforcement. Further, although the amended order states that the declaratory judgment conveys implied access to public benefits, the district court did not issue any orders or referrals to support the Petitioner’s health, safety, and welfare as relief from parental maltreatment as found under New Mexico law. Therefore, the declaratory judgment did not provide him with any protective or remedial relief pursuant to any New Mexico child protection provisions or any other New Mexico law, apart from findings enabling him to file his SIJ petition with USCIS.<sup>2</sup>

Therefore, the record does not establish that a primary reason for seeking the declaratory judgment was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, and not primarily to obtain an immigration benefit, and the Petitioner has not therefore demonstrated a bona fide request for SIJ classification. USCIS does not question the hardship the Petitioner has faced and recognizes that there may be some immigration-related motive for seeking a juvenile court order. However, to warrant USCIS’ consent, the requisite SIJ determinations must be made under state law in connection with proceedings granting some form of relief or remedy from parental abuse, neglect, abandonment, or a similar basis that the court has authority to provide under state law, rather than, as in this case, requesting only factual findings relating to an immigration benefit under federal law. 8 C.F.R. § 204.11(b), 204.11(d)(5)(i-ii).

In sum, the preponderance of the evidence does not show that a primary reason the Petitioner sought the requisite juvenile court determinations was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, rather than primarily to obtain an immigration benefit. 8 C.F.R. § 204.11(b). Consequently, USCIS’ consent to a grant of SIJ classification is not warranted.

### C. Juvenile Court

Beyond the decision of the Director, the Petitioner has not established by a preponderance of the evidence that the district court acted as a juvenile court for SIJ purposes in issuing the declaratory judgment when he was 20 years old. New Mexico law defines a “child” as a person who is under 18 years old. N.M. Stat. Ann. § 32A-1-4 (defining “child” for purposes of Children’s Code); § 40-10A-102 (defining “child” for purposes of Uniform Child-Custody Jurisdiction and Enforcement Act). Ordinarily, a New Mexico court’s jurisdiction to make an initial child custody determination ends upon a person’s eighteenth birthday. N.M. Stat. Ann. § 40-10A-201 (explaining court’s jurisdiction to make initial child custody determination concerning “child”). In response to the Director’s NOID, the Petitioner cites to various statutes addressing a district court’s jurisdiction, generally and over individuals between the ages of 18 and 21 years old, but those statutes do not explain a district court’s jurisdiction over the juvenile dependency or child custody of such individuals in the context of a declaratory judgment or where the underlying proceeding began after the individual’s eighteenth

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<sup>2</sup> Additionally, the declaratory judgment specifically provides jurisdiction over him until his SIJ petition is adjudicated by USCIS: providing further evidence that he sought the orders for immigration relief, rather than for relief from parental maltreatment.

birthday. See N.M. Stat. Ann. § 32A-1-8 (explaining that “[t]he court has exclusive original jurisdiction of all proceedings under the Children’s Code in which a person is eighteen years of age or older and was a child at the time the alleged act in question was committed”); § 32A-4-23.1(E) (detailing court’s continuing jurisdiction over undocumented immigrants adjudicated “abused or neglected” in proceeding under Abuse and Neglect Act and beyond their eighteenth birthdays, but appearing to apply only if court’s jurisdiction arose before “child reache[d] [18] years of age”); 32A-4-24 (contemplating continuing force beyond person’s eighteenth birthday of judgments that vest legal custody and appearing to require that judgments have been issued before “a child reaches eighteen years of age”); 32A-1-5 (establishing children’s court within each district court); N.M. Stat. Ann. § 40-10B-4 (allowing district court jurisdiction over proceedings under Kinship Guardianship Act).

Here, when the Petitioner was 20 years old, he obtained the declaratory judgment under the Declaratory Judgment Act (DJA), which allows a person “whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise” to “have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.” See N.M. Stat. Ann. § 44-6-4 (discussing power to construe). The record reflects that the only resulting order of the Petitioner’s proceeding was the declaratory judgment making SIJ-related determinations, including that “the [Petitioner] is dependent upon this ‘juvenile court’ in accordance with the laws of the State of New Mexico while the [Petitioner] is under the jurisdiction of this Court.” Although the declaratory judgment declares the Petitioner dependent, he has not submitted any evidence that the district court did so under a provision addressing his “‘custody and care” as a juvenile in a juvenile dependency or child custody proceeding. See section 101(a)(27)(J)(i) of the Act (requiring dependency or custody determination by a juvenile court); 8 C.F.R. § 204.11(a) (defining “juvenile court”); see also *Budhathoki v. Nielsen*, 898 F.3d 504, 513, 517 (5th Cir. 2018) (explaining that “‘dependency’ for SIJ status purposes has specific federal meaning). We also note that in the declaratory judgment, the district court stated that the Petitioner “is a juvenile under federal immigration law” and “the Child is a juvenile under federal immigration law” in paragraphs 2 and 11, respectively, and does not state that the Petitioner is considered a juvenile under New Mexico law.

The Petitioner argues that that the district court is a juvenile court because it is a court having jurisdiction over the custody and care of juveniles, generally, and the question of whether a court has jurisdiction over the custody and care of a juvenile depends on state, rather than federal, law; and New Mexico law allows for jurisdiction over the custody and care of individuals between the ages of 18 and 21 years old. We recognize that New Mexico district courts generally have jurisdiction over the custody and care of children as defined under New Mexico law and that they may qualify as “juvenile courts” for the purposes of SIJ classification in some instances. See N.M. Stat. Ann. §§ 32A-1-4, 40-10A-102, 40-10A-201. However, to be eligible for SIJ classification, the Petitioner must show that the district court acted as a “juvenile court” in his own case; that is, that it had jurisdiction under New Mexico law to determine his custody and care as a juvenile. See section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(b)-(d) (discussing the eligibility and evidentiary requirements for SIJ classification).

The Petitioner has not established that the district court exercised jurisdiction over him as a juvenile in a proceeding under the DJA or that the district court exercised jurisdiction over his dependency and/or custody and care as a child under New Mexico law given that he was over 18 years old. Therefore, the district court was not acting as a juvenile court at the time it issued the SIJ order.

### III. CONCLUSION

As discussed above, the Petitioner has not demonstrated that the district court was acting as a juvenile court or that he warrants USCIS' consent to a grant of SIJ classification. Accordingly, the Petitioner has not demonstrated his eligibility for SIJ classification.

**ORDER:** The appeal is dismissed.