



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

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

In Re: 12511462

Date: MAR. 4, 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 Petitioner had not demonstrated he warrants USCIS' consent to SIJ classification. The Petitioner asserts that an amended court order demonstrates his 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 sustain 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

In [] 2019, when the Petitioner was 20 years old, the Probate and Family Court of the Commonwealth of Massachusetts (Family Court) issued a *Decree of Special Findings of Fact and Rulings of Law* (SIJ order), making SIJ-related determinations for the Petitioner. The Family Court declared the Petitioner dependent on the Family Court in accordance with “M.G.L. c. 215 § 6,” “M.G.L. c. 199 § 39M(a),” and *Recinos v. Escobar*, 46 N.E. 3d 60 (Mass. 2016). The Family Court determined the Petitioner’s reunification with his parents is not viable due to their neglect under “110 C.M.R. § 2.00” as they failed to provide financial support and forced him to work in extremely hazardous conditions at a young age. The Family Court also determined it is not in the Petitioner’s best interest to return to Honduras as “he can pursue a safe and opportunistic future” in Massachusetts.

In [] 2020, the Family Court subsequently issued an *Amended Order for Special Findings of Fact and Rulings of Law on Complain in Equity File on [] 2019* (amended SIJ order) issued *nunc pro tunc* to the date of its original SIJ order. The amended SIJ order reiterates the Family Court’s previous findings that the Petitioner is dependent upon the Family Court in accordance with Massachusetts state and case law, reunification with his parents is not viable due to neglect under Massachusetts Law, and that it would not be in his best interest to return to Honduras. In addition, “[p]ursuant to M.G.L. c. 119 § 39M(d),” the Family Court referred the Petitioner to probation “for services to assist with his education, health and welfare, as relief from the parental abandonment and neglect he has suffered”

The Director denied the SIJ petition, concluding that the Petitioner’s SIJ order and amended SIJ order are not sufficient to establish the Family Court granted the Petitioner relief from parental maltreatment prior to the age of 21. To warrant USCIS’ consent, juveniles 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 6-7 (citing section 101(a)(27)(J)(i)-(iii) of the Act and H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that court orders were not sought primarily for the purpose of obtaining lawful permanent resident status, 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 an individual to file an SIJ petition with USCIS. *See Matter of D-Y-S-C-*, Adopted Decision 2019-02, at 6-7.

In the instant case, USCIS’ consent is warranted because the Petitioner has established by a preponderance of the evidence that his primary purpose in seeking the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law, rather than to obtain an immigration benefit. A juvenile court’s dependency declaration, on its own, is insufficient to warrant USCIS’ consent to SIJ classification absent evidence that the court issued the dependency declaration in juvenile court proceedings that actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law. *Matter of E-A-L-O-*, Adopted Decision 2019-04, 8 (AAO Oct. 11, 2019). As such, the retroactive application of section 39M does not, by itself establish that a juvenile sought relief from parental maltreatment beyond an order enabling the juvenile to file for SIJ classification. *Id.* at 7-8. However, section 39M provides for certain relief in the form of

“orders necessary to protect the child against further abuse or other harm,” including complaints for abuse prevention or support, as well as court-provided referrals for “psychiatric, psychological, educational, occupational, medical, dental or social services or protection against trafficking or domestic violence.” Mass. Gen. Laws ch. 119, §§ 39M(c)-(d). Here, the court ordered such relief because the *nunc pro tunc* amended SIJ order states that the court referred the Petitioner to probation for “services to assist with his education, health and welfare, as relief from the parental abandonment and neglect he has suffered. . .” This order and his dependency on this Court was also intended by the Family Court to assist the Petitioner in establishing residency “for educational services and healthcare purposes.”

The preponderance of the evidence demonstrates that the Petitioner sought the juvenile court order to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, rather than primarily to obtain an immigration benefit. *See Matter of E-A-L-O-*, Adopted Decision 2019-04 at 8-9. Consequently, the Petitioner has demonstrated that he is eligible for and merits USCIS’ consent to his SIJ classification.

ORDER: The appeal is sustained.