



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

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

In Re: 16673465

Date: MAR. 9, 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 Juvenile (SIJ petition), and the matter is now before us on appeal. The Administrative Appeals Office (AAO) reviews 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 sustain the appeal.

I. LAW

To establish eligibility for SIJ classification, petitioners must establish that they are unmarried, under 21 years of age, 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)(i) of the Act; 8 C.F.R. § 204.11(c). Petitioners must have been declared dependent upon a juvenile court, or the juvenile court must have placed them in the custody of a state agency or an individual appointed by the state agency 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 their or their parents' country of nationality or last habitual residence. Section 101(a)(27)(J)(ii) of the Act.

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 juvenile court order was sought to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law and not primarily to obtain an immigration benefit. Section 101(a)(27)(J)(i)–(iii) of the Act; *Matter of D-Y-S-C-*, Adopted Decision 2019-02 (AAO Oct. 11, 2019) (providing guidance on USCIS' consent authority as rooted in the legislative history of the SIJ classification and longstanding agency policy). 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

In [] 2018, when the Petitioner was 18 years old, a District Court in Virginia issued an *Order for Legal and Physical Custody* (custody order), placing the Petitioner under the sole legal custody of his father. The District Court specified that it “has the jurisdiction under Virginia law to make determinations about the custody and care of juveniles under Virginia Code § 16.1-241,” and that it has jurisdiction over the Petitioner “pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act and Virginia Code § 20-146.12” The District Court further determined, in relevant part, that the Petitioner’s mother “voluntarily relinquished her duty to care for and protect him” and that his reunification with his mother therefore is not viable “due to neglect and abandonment under Virginia Code §16.1-228(1) and §16.1-228(3).” Additionally, the court concluded that it is not in the Petitioner’s best interest to return to Guatemala, his country of nationality, because he lacks parental support there and it is in his best interest to remain in the custody of his father in Virginia. The District Court issued the custody order *nunc pro tunc* to [] 2018, when the Petitioner was 17 years old.

In response to a request for evidence (RFE) from the Director, the Petitioner provided a copy of the *Petition for Sole Legal and Physical Custody* (custody petition) and an affidavit from his attorney summarizing the evidence submitted before the District Court. The Director denied the SIJ petition based on a conclusion that the Petitioner did not show that the District Court took jurisdiction over him as a juvenile under state law, as section 101(a)(27)(J) requires. Furthermore, the Director determined that because the custody order was issued *nunc pro tunc* and there was “no evidence of a previous court order being issued prior to [the Petitioner] reaching the age of majority in the state of Virginia,” the evidence did not establish that USCIS’ consent to the Petitioner’s SIJ classification was warranted.

On appeal, the Petitioner argues that the District Court took jurisdiction over his case when his father filed the petition for custody in [] 2018, when the Petitioner was 17 years old, and scheduled a hearing to occur in [] 2018. He asserts that at the time of the hearing, the District Court issued the custody order *nunc pro tunc* to the date on which the court had originally taken jurisdiction over the matter, pursuant to Virginia Code § 16.1-242, which provides that when a court has obtained jurisdiction over a child, “such jurisdiction . . . may be retained by the court until such person becomes 21 years of age” Further, he argues that the custody petition and his attorney’s affidavit establish that the custody petition was filed based on his mother’s neglect and abandonment, and such evidence is sufficient to show that USCIS’ consent to his SIJ classification is warranted.

B. Juvenile Court

An SIJ petitioner must establish that the court exercised jurisdiction over them as a juvenile for purposes of court-ordered juvenile dependency or custody to protect the petitioner from parental abuse, neglect, abandonment, or a similar basis under state law, as required of qualifying juvenile court orders under section 101(a)(27)(J)(i) of the Act and 8 C.F.R. § 204.11(a) (explaining that 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.”) While the specific title and type of

state court may vary, SIJ petitioners must establish that the court had jurisdiction to make judicial determinations about their dependency and/or custody and care as juveniles under state law. *See Matter of A-O-C-*, Adopted Decision 2019-03, at 4 (AAO Oct. 11, 2019); *Matter of E-A-L-O-*, Adopted Decision 2019-04, at 3-4 (AAO Oct. 11, 2019); 6 *USCIS Policy Manual* J.2(C), <https://www.uscis.gov/policy-manual>.

The Director erroneously determined that since the Petitioner was 18 years old and over the age of majority in Virginia when the District Court issued its custody order, the court did not have jurisdiction over him under Virginia law. The evidence establishes that the District Court maintained continuing jurisdiction over the Petitioner pursuant to Virginia Code sections 16.1-241 and 16.1-242. The District Court specified in its order that it had jurisdiction over the Petitioner “pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act and Virginia Code § 20-146.12,” and Virginia law provides for the court’s retention of jurisdiction past the Petitioner’s 18th birthday. Accordingly, the record shows that the District Court had jurisdiction over the Petitioner as a juvenile when the custody order was issued, as section 101(a)(27)(J)(i) of the Act requires.

C. USCIS’ Consent

SIJ classification may only be granted upon the consent of the Secretary of Homeland Security, through USCIS, where a petitioner meets all 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 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 id.*; H.R. Rep. No. 105-405, 130 (1997) (reiterating the 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.”); *Matter of A-O-C-*, Adopted Decision 2019-03, at 6 (AAO Oct. 11, 2019); *Matter of D-Y-S-C-*, Adopted Decision 2019-02, at 5-6; *Matter of E-A-L-O-*, Adopted Decision 2019-04, at 6 (AAO Oct. 11, 2019). 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. *Id.*

In this case, the record demonstrates that the nature and primary purpose of the proceedings were to protect the Petitioner from parental neglect and abandonment. The District Court indicated in its custody order that the Petitioner’s mother “voluntarily relinquished her duty to care for and protect him.” The underlying custody petition also specifies that the Petitioner’s mother did not try to stop him when she knew that he was planning to travel to the United States alone, and that she thereby “disregarded her caretaker duties and responsibilities and did not adequately plan for [his] care and protections” Furthermore, the custody petition notes that the Petitioner’s mother “voluntarily relinquished her child with the intention of never again claiming her interests” and that her inaction placed the petitioner at “substantial risk of death, disfigurement, or impairment of bodily or mental functions.” The custody petition establishes the evidence of the Petitioner’s mother’s neglect and abandonment upon which the court relied when placing the Petitioner in the custody of his father and making the parental reunification and best interest determinations. Accordingly, the Petitioner has established that USCIS’ consent to his SIJ classification is warranted.

III. CONCLUSION

The Petitioner has overcome the grounds for denial of his SIJ petition. As the record otherwise demonstrates that the Petitioner meets the remaining eligibility criteria and his request for SIJ classification warrants USCIS' consent, he has established eligibility under section 101(a)(27)(J) of the Act.

ORDER: The appeal is sustained.