



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

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

In Re: 17500601

Date: MAY 3, 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. 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) 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

The Petitioner, a native and citizen of Guatemala, claims to have entered the United States without inspection, admission, or parole in 2018. In 2019, when the Petitioner was 20 years old, the

[redacted] Probate and Family Court in Massachusetts (family court) issued a *Judgment of Dependency Pursuant to G. L. c. 119, § 39* (SIJ order) for him. In [redacted] 2020, the family court issued an amended *Judgment of Dependency Pursuant to G. L. c. 119, § 39* (amended order) *nunc pro tunc* to the date of its SIJ order. In its orders, the family court declared the Petitioner to be “dependent upon this Court for his/her protection, well-being, care and custody, findings, rulings, and orders or referrals to support the health, safety, welfare of Child or to remedy the effects on Child of abuse, neglect, abandonment, or similar circumstances.” The family court determined that it is not viable for the Petitioner to reunify with his parents due to abandonment or similar circumstances to abandonment under “G.L. C. 119 SECTION 39M” and “M.G.L.c. 210 section 3,” as his mother is deceased and his father “has not been involved in his life for years.” The family court also determined it is not in the Petitioner’s best interest to return to Guatemala. The Petitioner’s underlying affidavit to the family court asserts that there is no one to care for him or protect him in Guatemala.

Chapter 119, section 39M of the Massachusetts General Laws applies to the probate and family court decree in this case. In enacting section 39M, the Massachusetts legislature determined that the new provision “shall apply” to certain requests for special findings pending in a juvenile court as of March 4, 2016, or commenced on or after that date; and “retroactively to any special findings issued that form the basis of a child’s petition for special immigrant juvenile classification if that petition is subject to denial or revocation based on the child’s dependency status or age when the special findings were issued.” 2018 Mass. Legis. Serv. Ch. 154 (H.B. 4800), Sec. 105 (West). As section 39M applies to the family court decree in this case, we will consider its application in our analysis of the Petitioner’s eligibility.

B. USCIS’ Consent

The Director determined the Petitioner had not established USCIS’ consent to SIJ classification was warranted. On appeal, the Petitioner asserts he met all SIJ eligibility criteria and thus merits USCIS’ consent to SIJ classification. The Petitioner claims that requiring him to demonstrate his SIJ orders were not sought primarily to obtain an immigration benefit is *ultra vires* and not required by the relevant statute or regulations.

Although we acknowledge the Petitioner’s claims, SIJ classification may only be granted upon the consent of DHS, through USCIS, where a juvenile 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 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 the court’s orders were not sought primarily for the purpose of obtaining the status of an individual lawfully admitted for permanent residence, rather than for the purpose of obtaining relief from parental maltreatment)). Where the juvenile court proceedings involve relief from parental abuse, neglect, abandonment, or a similar basis under state law, the record must also contain a reasonable factual basis for each of the requisite SIJ determinations. *Matter of D-Y-S-C-*, Adopted Decision 2019-02 at 8. Though the record contains a reasonable factual basis for the family court’s parental reunification and best interest determinations, the Petitioner has not demonstrated the family court granted him relief from parental maltreatment.

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 id.*; *see also Budhathoki v. Nielsen*, 898 F.3d at 511, n.5 (recognizing that USCIS policy guidance directs the agency to determine the "primary purpose" of a request for SIJ determinations); *Reyes v. Cissna*, 737 Fed. Appx. 140, 145 (4th Cir. 2018) (finding USCIS did not abuse its discretion and properly withheld consent from an SIJ petition unsupported by sufficient evidence that the juvenile sought the court order to obtain relief from parental maltreatment, and not primarily to obtain an immigration benefit, as the USCIS Policy Manual explained).

The Petitioner asserts that since his amended order contains a custody placement for him with his brother, the court granted him the requisite relief from parental maltreatment. However, the family court's amended order states only that "it is in the best interest of [Petitioner] to remain in the care of [L-G-¹]." And the family court's finding that it is in the Petitioner's best interest to remain with his brother, and its related finding that it is not in the Petitioner's best interest to return to Guatemala, do not constitute orders or grants of relief from parental maltreatment. Specifically, the family court did not grant custody of the Petitioner to his brother; similarly, the family court did not order that the Petitioner cannot return to Guatemala. Accordingly, though the family court made a qualifying best interest determination for the Petitioner, it did not order or grant any associated relief for the Petitioner from his parents' abandonment.

The Petitioner also asserts that the family court declaration that he "is dependent upon this Court for his/her protection, well-being, care and custody, findings, rulings, and orders or referrals to support the health, safety, welfare of Child or to remedy the effects on Child of abuse, neglect, abandonment, or similar circumstances" equates to a remedy. We acknowledge a dependency declaration was made for the Petitioner by the family court. However, as stated in *Matter of E-A-L-O-*, Adopted Decision 2019-04 (AAO Oct. 11, 2019), at 7-8, a dependency declaration alone is not sufficient to warrant USCIS' consent to SIJ classification absent evidence that the dependency declaration was issued in juvenile court proceedings which actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law. The Petitioner submits a non-precedent Administrative Appeals Office decision and asserts that under similar facts, we previously determined a petitioner warranted USCIS' consent to SIJ classification. We note the juvenile court in that matter, unlike the family court here, referred the petitioner to probation for medical, occupational, and educational resources. We further note that non-precedent decisions do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c).

The Petitioner contends we should rely upon the family court's ability to make decisions in this matter and asserts the family court found that he is unable to reunify with his parents due to their abandonment. Although USCIS generally defers to juvenile courts on matters of state law, the determination of whether a state court order submitted to USCIS establishes a Petitioner's eligibility for SIJ classification is a question of federal law within the sole jurisdiction of USCIS. *See Matter of E-A-L-O-*, Adopted Decision 2019-04 at 6 (*citing Budhathoki*, 898 F.3d at 511 ("Whether a state court

¹ Initials are used to protect the privacy of this individual.

order submitted to a federal agency for the purpose of gaining a federal benefit made the necessary rulings very much is a question of federal law, not state law, and the agency had authority to examine the orders for that purpose.")). The Petitioner also contends the family court's orders allowed him to receive benefits from services in the United States, including medical and employment services. Though the Petitioner asserts he is eligible for services due to the family court's findings, he has not established he requested, or the family court ordered any protective or remedial relief for maltreatment pursuant to the Massachusetts child protection provisions or any other Massachusetts law apart from findings enabling him to file an SIJ petition with USCIS. We recognize that 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 (2018); 2018 Mass. Legis. Serv. Ch. 154 (H.B. 4800), Sec. 105, 113 (West). However, 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. *Matter of E-A-L-O-*, Adopted Decision 2019-04 at 7-8. We acknowledge the family court's orders considered whether the Petitioner was mistreated by his parents and made other SIJ-related determinations for him. But here, the family court did not issue any orders or referrals to the Petitioner to support his health, safety, and welfare under the 39M provisions as relief from parental maltreatment as found under state law.

USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order. But 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, rather than, as in this case, requesting only findings relating to an immigration benefit under federal law. *See, e.g., Matter of D-Y-S-C-*, Adopted Decision 2019-02 (concluding that USCIS' consent was warranted where juvenile court issued SIJ-related findings in child protection proceedings removing the juvenile from her abusive father's home and placing her in the custody of the state department of family and protective services).

Overall, the preponderance of the evidence shows that the Petitioner primarily sought the juvenile court decree to obtain an immigration benefit rather than to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law. Consequently, USCIS' consent to a grant of SIJ classification is not warranted.

III. CONCLUSION

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

ORDER: The appeal is dismissed.