



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

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

In Re: 11972409

Date: MAY 25, 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 denied the Petitioner's Form I-360, Petition for Special Immigrant Juvenile (SIJ petition). The matter is now before us on appeal. We review 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 dismiss the appeal.

I. LAW

To establish eligibility for SIJ classification, a petitioner 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 of their 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(b). 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 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 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; 8 C.F.R. § 204.11(c)(2).

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 a 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. 8 C.F.R. § 204.11(b)(5). USCIS may 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. *Id.* 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 Factual and Procedural History

On [REDACTED] 2017, when the Petitioner, a native and citizen of El Salvador, was 18 years old, a District Court in [REDACTED] Texas (district court) issued an *Order Granting Declaratory Judgment* (SIJ order) in which it entered findings relevant to the Petitioner's eligibility for SIJ classification. The SIJ order provides, in pertinent part, that the district court, within the meaning of section 101(a)(27)(J) of the Act and 8 C.F.R. § 204.11, has "jurisdiction under Texas law 'to make judicial determinations about custody and care of juveniles,'" and that the Petitioner is dependent on the court. The SIJ order further determines that the Petitioner's reunification with one or both parents is not viable due to abandonment, neglect, or a similar basis under Texas law, and that it is not in his best interest to be returned to El Salvador, his country of nationality. The Petitioner filed his SIJ petition in May 2018 based on this order.

The Director denied the SIJ petition, determining that the Petitioner had not demonstrated that the district court had jurisdiction over him as a juvenile under state law pursuant to section 101(a)(27)(J) of the Act. On appeal, the Petitioner asserts that he has established his eligibility for SIJ classification because he filed his petition for declaratory judgment with the district court before he turned 18 years old and the district court granted his petition. He contends that the record contains the factual basis for the district court's finding that his reunification with at least one of his parents is not viable due to abandonment and that it is not in his best interest to be returned to El Salvador. The Petitioner argues that according to the Texas Family Code, the district court retains jurisdiction of this type of case once it is filed when the minor is under the age of 18 and USCIS must give deference to the determination made by the district court. He further contends that the Director erred by relying on USCIS adopted decisions that became binding authority after his SIJ petition was filed in 2018.

B. Juvenile Court

To be eligible for SIJ classification, juveniles must have been subject to a dependency or custody order issued by a "juvenile court." Section 101(a)(27)(J)(i) of the Act; 8 C.F.R. § 204.11(c)(1)(i). The term "juvenile court" is defined as "a court located in the United States that has jurisdiction under State law to make judicial determinations about the dependency and/or custody and care of juveniles." 8 C.F.R. § 204.11(a). Although the specific title and type of state court may vary, SIJ petitioners must establish that the juvenile court "exercised its authority over the petitioner as a juvenile and made the requisite judicial determinations in this paragraph under applicable State law." 8 C.F.R. § 204.11(c)(3)(i). In making this determination, state law, not federal law, governs the definition of "juvenile," "child," "infant," "minor," "youth," or any other equivalent term for juvenile which applies to the dependency or custody proceedings before the juvenile court. *See* 8 C.F.R. § 204.11(a), (c)(3)(i) (requiring courts to have jurisdiction over and make determinations about juveniles under applicable state law); *see also Budhathoki v. Nielsen*, 898 F.3d 504, 513 (5th Cir. 2018) ("Although the regulation permits an applicant for SIJ status to be someone who has not yet become age 21, what controls on eligibility for that status is the state law governing decisions over the care and custody of juveniles"); Final Rule, Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13,066, 13,077 (Mar. 8, 2022) (indicating that state law governs the definition of juvenile and other similar terms).

In this case, the Director properly determined that the SIJ order was not issued pursuant to the district court's jurisdiction over the Petitioner as a juvenile, because the Petitioner was over 18 years old and no longer a child or juvenile under Texas law when the court issued the order. We acknowledge that Texas district courts have subject matter jurisdiction over family law issues involving child welfare and custody and may qualify as a juvenile court under state law. However, Texas district courts are courts of general jurisdiction under Texas law and therefore, do not rule on juvenile matters in every case before them. Tex. Const. Art. V, § 8 (addressing jurisdiction of district courts); Tex. Fam. Code Ann. § 51.04(b) (designation of district court as a juvenile court); Tex. Fam. Code Ann. § 101.032(a) (SAPCR proceedings). When a district court does take jurisdiction over issues involving the custody and care of juveniles, it adheres to the Texas Family Code, which defines “child” or “minor” as “a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.” Tex. Fam. Code Ann. § 101.003(a); *see also* Tex. Fam. Code Ann. §§ 51.02(2) (defining “child” in the Juvenile Justice Code as a minor between the ages of 10 and 17, or between 17 and 18 with delinquent or other conduct indicating a need for supervision), 152.101 (defining “child” as “an individual who has not attained 18 years of age” for Uniform Child Custody Jurisdiction and Enforcement Act purposes).

Here, the Petitioner has not established by a preponderance of the evidence that the district court exercised jurisdiction over him as a juvenile under Texas law because it issued the order and made the requisite SIJ related determinations after the Petitioner's eighteenth birthday. Although the district court refers to the Petitioner as a “child” in the SIJ order, it cited no state law or authority demonstrating that the Petitioner qualified as a child or juvenile under state law after his eighteenth birthday. The Petitioner contends that the district court has continuing exclusive jurisdiction over him as a child and dependent of the court because he submitted his petition prior to turning 18 years of age. We acknowledge that Texas courts can exercise continuing jurisdiction in certain circumstances under section 152.202 of the Tex. Fam. Code Ann.¹ However, those circumstances are not present here, as the Petitioner has not provided evidence or otherwise established that the district court entered any order in his case prior to his eighteenth birthday, or that the court cited to or relied upon any applicable Texas provision or law under which it exercised jurisdiction over the Petitioner as a juvenile after his eighteenth birthday, when he was no longer a child or juvenile under Texas law.

Accordingly, and while we do not question the validity of the district court's declaratory judgment, the Petitioner has not demonstrated that the district court was acting as a juvenile court when it issued the order and made the SIJ related findings after the Petitioner's eighteenth birthday, when he was no longer a child under Texas law. Therefore, the Petitioner has not met his burden to establish that he is eligible for and merits USCIS' consent to his SIJ classification.²

ORDER: The appeal is dismissed.

¹ Section 152.202(a) of the Tex. Fam. Code Ann. provides that Texas courts retain exclusive continuing jurisdiction, until certain subsequent determinations occur, in cases where “a court of this state which has made a child custody determination.”

² The Petitioner also argues that the Director's decision impermissibly relied on adopted decisions that were published subsequent to the SIJ order, and those decisions should not be retroactively applied to his case. However, our adopted decisions did not create a new rule or standard that imposed a new legal consequence for all SIJ cases nor are our adopted decisions new statutes, legislation, or even policy; an adopted decision is a decision that is approved by the agency to provide clarity for USCIS personnel as well as the public in the way in which we adjudicate SIJ cases.