



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

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

In Re: 18468610

Date: NOV. 02, 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), concluding that the court decrees were not issued by a juvenile court and lacked a qualifying dependency declaration or custodial placement. The Petitioner appealed the Director's decision. We withdrew the Director's decision and remanded the matter for consideration of whether the Petitioner's request for SIJ classification warrants USCIS' consent. Following issuance of a request for evidence the Director denied the petition, finding that the Petitioner did show the court provided some form of placement, supervision, services or other relief in connection with the finding of dependency, and therefore USCIS' consent is not warranted.

The Petitioner now appeals the Director's decision. 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, 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).¹ 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).

¹ The Department of Homeland Security issued a final rule, effective April 7, 2022, amending its regulations governing the requirements and procedures for petitioners who seek SIJ classification. *See* Special Immigrant Juvenile Petitions, 87 Fed. Reg. 13066 (Mar. 8, 2022) (*revising* 8 C.F.R. §§ 204, 205, 245).

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

In [] 2017 the [] Probate and Family Court in Massachusetts issued a *Decree of Special Findings of Fact and Rulings of Law* declaring the court’s jurisdiction to make equity determinations within the meaning of Section 101(a)(27)(J) of the Act and 8 C.F.R. § 204.11(a)(c) and finding the Petitioner dependent upon the court’s jurisdiction until the SIJ process was complete or his 21st birthday. The court found reunification with the Petitioner’s father not viable due to abandonment and that it was not in his best interests to be returned to Guatemala. The court issued a second, *nunc pro tunc* decree reiterating its equity jurisdiction to make determinations about the dependency, care and well-being of the Petitioner under Massachusetts law. The decree contained the court’s declaration that the Petitioner remained dependent on the court for his safety and well-being pursuant to Massachusetts General Laws, and that reunification with his father was not viable due to neglect and abandonment under the Code of Massachusetts Regulations and Massachusetts General Laws. Both decrees set forth factual findings in support of the reunification and best interest determinations.

The Director denied the SIJ petition, concluding that the court decrees were not issued by a juvenile court and lacked a qualifying dependency declaration or custodial placement. In our decision on the Petitioner’s appeal, we determined that the Petitioner had overcome these grounds for denial of his SIJ petition as he had established that the court decrees were issued by a juvenile court within the meaning of the Act, and that the juvenile court made a qualifying juvenile dependency declaration.² We took administrative notice that the Massachusetts General Laws pertaining to the protection and care of children were amended and applied retroactively. *See* Mass. Gen. Laws ch. 119, § 39M (2018); 2018 Mass. Legis. Serv. Ch. 154 (H.B. 4800), Sec. 105, 113 (West). We noted that both court decrees contained the juvenile court’s declaration that the Petitioner remained dependent upon the court and the record established that the declaration was issued under section 39M. We concluded that the Petitioner was therefore declared dependent upon the juvenile court in accordance with a Massachusetts law governing such declarations. We withdrew the Director’s decision as it was based on an evaluation of the law cited in the decrees before section 39M was enacted.

² In our prior decision we cited the New York district court decision in *R.F.M. v. Nielsen*, 365 F.Supp.3d 350 (S.D.N.Y. 2019).

We also explained that the nature and purpose of the juvenile court proceedings are central to whether USCIS' consent is warranted, but determined that the record did not indicate that the Petitioner was seeking any form of relief from parental neglect and abandonment by his father, apart from the factual findings required to file for SIJ classification and the record did not establish that he sought the juvenile court order primarily to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, rather than to obtain an immigration benefit. As the Director's decision did not address whether the Petitioner's request for SIJ classification warranted USCIS' consent, we remanded the matter for the Director to consider that issue in the first instance.

The Director subsequently denied the SIJ petition, concluding that the order found the Petitioner dependent on the court but did not indicate whether the court provided some form of relief to protect him from parental abuse, abandonment, neglect, or a similar basis under state law. The Director determined that the Petitioner did show that the court provided some form of placement, supervision, services, or other relief in connection with the finding of dependency, and therefore USCIS' consent was not warranted. The Director acknowledged the Petitioner's assertion that the plain language of the court order stating that he remained dependent upon his mother for physical and educational care was an equivalent form of relief, but, referring to our decision on the prior appeal, concluded the court order did not indicate that he sought any form of relief from the parental neglect and abandonment by his father, apart from the factual findings required to file for SIJ classification.

On the instant appeal, the Petitioner argues, through counsel, that the court's dependency placement with his mother provides for his care and remedies his father's abandonment and neglect by ensuring proper protection and supervision. He contends that dependency placement with an individual constitutes remedial relief from parental maltreatment and is beyond an order with only factual findings to enable an SIJ petition. The Petitioner maintains that the court did not give a blanket dependency finding but rather gave concrete relief specifically placing his mother, accountable to the court, in charge of his physical and educational needs until he is able to live independently in order to remedy past neglect by his father. The Petitioner contends that with a factual history of inadequate care from the abandonment by his father prior to his 2006 death to the neglect by his grandparents, the court decree specifically remedies past maltreatment by ordering his mother to provide proper physical and educational care. He argues that the court decree remedies past neglect by providing relief in the form of a dependency placement under his mother's supervision, specifying that she must properly care for him through high school until he becomes independent.

To warrant USCIS' consent, juveniles must 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). In exercising this consent function, USCIS looks to the juvenile court's determinations, the factual bases supporting those determinations, and the relief provided or recognized by the juvenile court. 8 CFR 204.11(d)(5). Such relief may include custodial placement, dependency on the court for the provision of child welfare services, and/or other court-ordered or recognized protective or remedial relief. 8 CFR 204.11(d)(5)(i)(A) and (B).

Review of the record does not indicate that the court provided any protective or remedial relief. In the *nunc pro tunc* decree, the court determined that the Petitioner was dependent upon his mother for "proper physical and educational care as he attends high school." It further indicated it in his best

interest to remain in the United States under the continued care of his mother who is willing and able to support him until he is able to live independently and not in his best interest to return to Guatemala to face gang violence and lack of adequate supervision and care. The order also indicated that the findings were made due to the abandonment and neglect by the Petitioner's father, to provide for his safety and well-being, and to protect him from future harm, in accordance with section 1, chapter 119 of the Massachusetts General Laws.

We recognize that under section 39M Massachusetts law 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. However, the Petitioner's court order does not establish that he sought and was provided relief from parental maltreatment beyond an order enabling him to file for SIJ classification. *See* 8 C.F.R. § 204.11(d)(5)(ii). A dependency declaration is insufficient to warrant USCIS' consent to SIJ classification absent evidence that the court issued the dependency declaration in proceedings that actually granted relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(d)(5). The record does not reflect that the court order granted the Petitioner any specific relief related to the abandonment or neglect he endured in the past, or that the court took jurisdiction over the Petitioner in any other prior or related proceeding providing him with any type of relief or remedy from parental abuse, neglect, abandonment, or a similar basis under Massachusetts law. The court did not issue any specific orders or referrals to support the Petitioner's health, safety, and welfare as relief from parental maltreatment, as required by 8 C.F.R. § 204.11(d)(5)(ii). Without such court-ordered relief, the Petitioner has not demonstrated that USCIS' consent is warranted.

The Petitioner has not overcome the basis of the Director's denial on appeal. As a result, he has not established his eligibility for SIJ classification.

ORDER: The appeal is dismissed.