



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

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

In Re: 21103997

Date: OCT. 28, 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 that USCIS' consent to SIJ classification was not warranted. 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, the appeal will be dismissed.

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).

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).

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).

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 [REDACTED] 2020, when the Petitioner was 19 years old, the Commonwealth of Massachusetts Trial Court, Probate and Family Court (Family Court) issued an order titled *Judgement of Dependency Pursuant to G.L. c. 119, § 39M* (SIJ order), determining among other findings necessary for SIJ eligibility under section 101(a)(27)(J) of the Act, that the Petitioner “is dependent on this Court for his/her protection, well-being, care and custody, findings, rulings, and orders or referrals to support the health, safety, welfare of [the Petitioner] or to remedy the effects on [the Petitioner] of abuse, neglect, abandonment, or similar circumstances.” The Family Court further found that reunification with the Petitioner’s mother was not viable due to abuse, neglect, and abandonment, and that it was not in his best interest to be removed from the United States and returned to Brazil, his country of nationality.

Based on the SIJ order, the Petitioner filed this SIJ petition in October 2020. In July 2021, the Director denied the SIJ petition, determining that the Petitioner did not establish that he warranted USCIS’ consent. While the SIJ petition was pending, the Director issued a request for evidence (RFE), and the Petitioner responded timely. In his response to the RFE, the Petitioner submitted a brief and a copy of his complaint submitted to the Family Court. After receiving the Petitioner’s response to the RFE, the Director determined that the SIJ order did not indicate whether the court provided some form of relief to protect the Petitioner from parental abuse, abandonment, supervision, or services in connection with the finding of dependency. Therefore, the Director could not determine if the Petitioner sought the SIJ order primarily to obtain an immigration benefit or relief from parental mistreatment and held that the Petitioner did not warrant USCIS’ consent. On appeal, the Petitioner submits a brief, and a copy of the SIJ order, which was previously included in the record.

B. USCIS’ Consent

Classification as an SIJ may only be granted upon the consent of USCIS. Section 101(a)(27)(J)(iii) of the Act; 8 C.F.R. § 204.11(b)(5). We do not question the Family Court’s purpose in issuing its orders, but here, USCIS’ consent is not warranted because the Petitioner has not established that a 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.

To warrant USCIS’ consent, juveniles must establish that the request for SIJ classification was bona fide, such that a primary reason the requisite juvenile court or administrative determinations were sought was to gain relief from parental abuse, neglect, abandonment, or a similar basis under state law. 8 C.F.R. § 204.11(b)(5); *see also* section 101(a)(27)(J)(i)-(iii) of the Act; H.R. Rep. No. 105-405, 130 (1997) (reiterating the requirement that SIJ-related determinations not be 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. *See id.*; *see also Budhathoki v. Nielsen*, 898 F.3d

504, 511 n.5 (5th Cir. 2018) (recognizing that USCIS policy guidance directs the agency to determine the “primary purpose” of a request for SIJ findings).

On appeal, the Petitioner argues that there is no requirement for the Family Court to provide relief in addition to the dependency finding. He contends that he has met all of the eligibility requirements in section 101(a)(27)(J) of the Act and has met his burden. The Petitioner points to the Massachusetts state law, General Law Chapter 119, section 39M, which controls that state’s issuance of SIJ findings, and notes that this law does not require some additional form of relief for the court to declare a juvenile dependent on the court, nor does Massachusetts law require a petitioner to be placed in the custody of another individual in order for an SIJ order to be issued. The Petitioner appears to be conflating the requirements for a dependency determination with the requirement to show that he warrants USCIS’ consent. Since the Director did not make an adverse determination regarding the SIJ order’s dependency determination, this argument is unavailing.

However, the Petitioner has not established that a primary reason he sought the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, rather than to obtain an immigration benefit. USCIS recognizes that there may be some immigration-related motive for seeking a juvenile court order. However, 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. We note that in the Petitioner’s *Complaint for Dependency* (underlying petition), he requested the court to “enter any other orders the Court deems necessary for the protection from abuse, abandonment, and neglect, and for the well-being, care, support, health and safety, and best interest.” However, the SIJ order did not make any further orders, referrals, or placements, and only contains the findings required for the Petitioner to file an SIJ petition. While the SIJ order noted that they granted relief under Massachusetts G.L. c. 119 section 39M and declaratory relief under G.L. c. 231 sections 1, 2, and 9, these sections of Massachusetts law do not provide actual relief necessary for USCIS to consent to the Petitioner’s SIJ classification; rather, they outline the authority under which the Family Court has jurisdiction, and the power to make declaratory judgements.² Massachusetts G.L. c. 231A section 9 does state that its “purpose is to remove, and to afford relief from, uncertainty and insecurity with respect to rights, duties, status and other legal relations.” However, this statute doesn’t relate to relief from parental maltreatment or a similar basis.

In our *de novo* review, we note that a dependency declaration alone is not enough to show that consent is warranted without evidence of “dependency on the court *for the provision of child welfare services and/or other court-ordered or court-recognized protective or remedial relief*.” 8 CFR § 204.11(d)(5)(ii)(B) (emphasis added). Here, the Petitioner has not established that the Family Court provided 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.

² We note the appropriate section of Massachusetts G.L. regarding declaratory relief appears to be chapter 231A.

The remainder of the Petitioner's brief discusses how he met the requirements for a judicial determination of parental reunification, and that the Family Court declared that it was not in his best interest to return to Brazil; however, these findings contained in the order were not in dispute in the Director's decision. Ultimately, the preponderance of the evidence shows that the Petitioner has not established that a primary reason he sought the SIJ order was to obtain relief from parental abuse, neglect, abandonment, or a similar basis under state law, rather than to obtain an immigration benefit. Consequently, USCIS' consent to a grant of SIJ classification is not warranted.

III. CONCLUSION

As discussed above, the Petitioner has not demonstrated that he warrants USCIS' consent to a grant of SIJ classification. Accordingly, the Petitioner has not demonstrated his eligibility for SIJ classification.

ORDER: The appeal is dismissed.